INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 4304. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20428. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB Building, Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-11386 Filed 4-14-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-398-000]

New England Power Co.; Filing

April 9, 1981.

The filing Company submits the following:

The Federal Energy Regulatory Commission issues notice that on April 1, 1981, New England Power Company ("NEP") filed revisions to its rates for Primary Service for Resale, Contract Demand Service, and System Power Unreserved Service, and amendments to Contracts with Green Mountain Power Corporation and with the Town of Hudson Light and Power Department, incorporating an Oil Conservation Adjustment charge ("OCA"). The Company proposes that the filings be made effective on June 1, 1981.

NEP states that acceptance of the OCA charge will permit it to recoup the OCA charges paid to Holyoke Power and Electric Company as a result of the tariff changes approved in Docket No. ER81-165 and allow it to initiate the conversion of Salem Harbor Units 1, 2 and 3 from oil to coal as soon as it obtains a Delayed Compliance Order from the Environmental Protection Agency. As a result of the conversion the Company estimates that fuel charges will be reduced substantially. The Company intends to flow the full fuel cost reduction to its customers through its fuel adjustment clause but seeks to recoup two-thirds of the savings through the OCA. The OCA charge will terminate when NEP no longer is obligated to pay OCA charges to Holyoke and has been reimbursed for the cost of converting the Salem Harbor units to coal.

Any person desiring to be heard or to make any protest with reference to this filing should on or before April 28, 1981, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a petition to intervene. Copies of the filing and supporting documents are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-11387 Filed 4-14-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP81-47-000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

April 9, 1981.

Take notice that Northwest Pipeline Corporation ("Northwest"), on March 31, 1981 tendered for filing proposed changes in its FERC Gas tariff, First Revised Volume No. 1 and Original Volume No. 2. The proposed changes would increase jurisdictional revenues by $115,732,380, inclusive of transportation services, annually based on the twelve-month period ending December 31, 1980, as adjusted. Northwest also proposed changes in Original Volume No. 2 of its FERC Gas Tariff to provide for uniform rates for mainline and area gathering rates and fuel use allowances. Northwest has requested that the increased rates be made effective on May 1, 1981.

Northwest states that the requested rate increase is to recover its jurisdictional cost of service for the twelve months ended December 31, 1980, as adjusted for changes through September 30, 1981. Northwest states that the principal reasons for the requested increases are:

(1) Increased special overriding royalty costs; (2) increased costs associated with expansion of gas supply and other facilities; (3) increased operation and maintenance expenses, including landowner royalties; (4) increase in rate of return to 13.92 percent in order to compensate for high cost of capital; and (5) decreased sales volumes.

Northwest states that copies of this filing were served on the Company's jurisdictional customers and affected state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 22, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-11388 Filed 4-14-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RP-75-73-024, et al.]

Texas Eastern Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

April 9, 1981.

Take notice that the pipelines listed in the appendix hereto have submitted to the commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before April 24, 1981. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
3/23/81	Texas Eastern Transmission Corp.	RP75-73-024	Report.
3/24/81	Natural Gas Pipe Line Co. of America.	RP-80-11-004.	Report.
3/24/81	Trunkline Gas Co	RP74-89-002	Report.
3/25/81	Algonquin Gas Transmission Co.	CP77-337	Petition and plan.

·Appendix—Continued

Filing date	Company	Docket No.	Type filing
3/30/81	Alabama Tennessee Natural Gas Co.	RP73-113-006.	Report.
4/1/81	National Fuel Gas Supply Corp.	TA80-1-16	Report.
4/1/81	Midwestern Gas Transmission Co.	RP80-23-007	Report.
4/1/81	El Paso Natural Gas Co.	RP79-12-012	Report.

[FR Doc. 81-11389 Filed 4-14-81; 8:45 am]

BILLING CODE 6450-85-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of March 2 Through March 6, 1981

During the week of March 2 through March 6, 1981, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Charles L. Feltus, 3/6/81, *BFA-0603*

Charles L. Feltus filed an Appeal from two denials by the Personnel Officer and the Regional Representative for DOE Region IV of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the two documents which were initially withheld by the denying officials were exempt from mandatory public disclosure pursuant to Exemption 5 of the FOIA. Accordingly, Mr. Feltus' Appeal was denied.

Mobil Oil Corporation, 3/4/81, *BEA-0144*

Mobil Oil Corporation filed an Appeal from a State Set-Aside Order issued by the Energy Division of the State of Connecticut Office of Policy and Management. The State Set-Aside Order directed Mobil to supply Fuel Oils, Inc. of Stamford, Connecticut with 50,000 gallons of #2 heating oil pursuant to 10 CFR 211.17(a). In considering the Appeal, the DOE found that any reduction in supplies of #2 heating oil suffered by Mobil's regular customers was irrelevant to the propriety of the Order. However, the DOE agreed with Mobil's contention that the Order was defective in that it did not contain sufficient findings to establish the factual basis upon which such an Order must be predicated. Accordingly, the DOE rescinded the State Set-Aside Order.

Stephen M. Shaw, 3/6/81/ *BFA-0606*

Stephen M. Shaw filed an Appeal from a determination issued to him by the Director of the Division of Freedom of Information and Privacy Acts Activities in which the Director declined to waive search and copying fees in connection with a request for information which Mr. Shaw had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that a waiver of fees would not be in the public interest. Accordingly, Shaw's Appeal was denied.

Skyline Radio Taxi Association, et al. 3/6/81, *BEA-0421*

Seven taxi associations located in New York City appealed a determination issued by the Office of Petroleum Operations denying their application for the assignment of a supplier and base period allocation of motor gasoline. The appellants argued, in part, that, notwithstanding the decontrol of motor gasoline, they were entitled to an allocation under Special Rule No. 9. The DOE found that Special Rule No. 9 had no application either to taxis or to motor gasoline, and that the remaining arguments raised by the appellants in their appeal were rendered moot by the executive order decontrolling motor gasoline. Executive Order 12,187, 46 FR 9909 (1981). Accordingly, their appeal was dismissed.

Remedial Order

Julie L. Williams, 3/5/81, *BFA-0600*

Julie L. Williams filed an Appeal from a denial by the Southwest District Manager of the Economic Regulatory Administration of a request for information which she had filed under the Freedom of Information Act. The District Manager had denied her request for copies of formal enforcement documents involving certain named firms on the ground that his office possessed no documents responsive to the request. In considering the Appeal, the DOE noted that copies of formal enforcement documents are kept on file in the DOE Public Reading Room and that material available in an agency public reading facility is not an appropriate subject for a Freedom of Information request. Accordingly, the DOE dismissed the Appeal.

Wallace Barnes d/b/a North Eastham Exxon, 3/3/81, BRO-1318

Wallace Barnes d/b/a North Eastham Exxon objected to a Proposed Remedial Order which the Northeast District Officer of Enforcement issued to him on September 3, 1980. In the Proposed Remedial Order, the Office of Enforcement found that Barnes's retail outlet charged prices for motor gasoline in excess of those permitted by 10 CFR 212.93(a)(2) and that the outlet failed to post either its maximum allowable selling price or a price certification as required by 10 CFR 212.129(b). Because Barnes conceded the accuracy of the findings in the PRO that he violated DOE regulations, the DOE therefore concluded that the PRO should be issued as a final Order. The final Remedial Order was not made immediately effective, however, in order to enable Barnes to file an Application for Exception from its requirement that he refund the entire amount of overcharges plus interest in one lump sum payment.

Requests for Exception

Burlington Northern Inc., 3/3/81, *DEE-2104*

Burlington Northern Inc. filed an Application for Exception from the reporting requirements in Form EIA-28 (Energy Company Financial Reporting System). In its Application, the firm sought to be relieved of the obligation to prepare and submit the form. In considering the request, the DOE found that the firm had failed to establish that it is not properly classified as a reporting company under Form EIA-28 or that it is sustaining a disproportionate administrative burden resulting in a serious hardship and gross inequity by reason of its reporting obligation. Accordingly, exception relief was denied. The important issue discussed in the Decision and Order involves the definition of energy producing company as set forth in section 205(h)(6) of the Department of Energy Organization Act.

Conoco Inc., 3/2/81, BXE-1581

Conoco Inc. filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D in which the firm sought price relief for the crude oil produced from the Plum Bush Creek Unit in Washington County, Colorado. Exception relief was granted to permit Conoco Inc. to sell 47.33 percent of the crude oil produced and sold for the benefit of the working interest owners that qualify for the independent producer tax rate and 81.17 percent of the crude oil produced for the benefit of the remaining working interest owners at market prices. Conoco was permitted to sell the remainder of the working interests; share of production from the property at upper tier ceiling prices.

Looman Distributing, Inc., 3/4/81, BEE-1549

Looman Distributing, Inc. filed an Application for Exception from the reporting requirements of Form EIA-9A, No. 2 Distillate Price Monitoring Report. In its application, Looman alleged that the reporting requirements imposed a serious hardship on the firm and requested that the DOE issue an Order relieving the firm of the obligation to complete and submit Form EIA-9A. In considering the request, the DOE found that Looman failed to demonstrate that it was suffering a serious hardship but that the firm had shown that it was unable to comply with the reporting deadlines. Accordingly, exception relief was granted which gave Looman an extension of time in which to file its reports.

McMurrey Petroleum, Inc., 3/2/81, BEE-1546

McMurrey Petroleum, Inc. filed an Application for Exception from the provisions of 10 CFR 212.31 in which the firm sought to be permitted to certify according to its appropriate category the crude oil produced from the B. D. Everett No. 1 Lease in June 1980. In considering the request, the DOE found that McMurrey's prompt and good faith attempt to comply with the DOE crude oil certification requirements was frustrated by external circumstances and that exception relief was necessary to prevent McMurrey from experiencing a gross inequity under the DOE regulations. The firm's Application for Exception was therefore granted.

Merit Petroleum, Inc., 3/4/81, BEE-1637, BES-1637, BET-1637

Merit Petroleum, Inc. filed Applications for Temporary Stay and Stay and for an Exception from the requirement that it file a reply to a Notice of Probable Violation (NOPV) as required by 10 CFR 205.191. The

DOE determined that its submissions were premature and that Merit was obliged to answer the NOPV and interpose its arguments in the enforcement proceeding. The DOE therefore denied all three applications.

St. Louis County Police Department, 3/5/81, DEE-6617

The St. Louis County Police Department filed an Application for Exception from the Provisions of 10 CFR 211/102 in which the firm sought to be assigned a supplier and a base period allocation of motor gasoline. In considering the request, the DOE found that the applicant's concern does not relate to any adverse effect of DOE regulations upon its present operations, but rather the potential effect in the event that future restrictions are reimposed using the 1977/78 base period for gasoline allocations. Since speculation about future actions does not form a proper basis for exception relief, and since motor gasoline has been exempted from the DOE Mandatory Petroleum Allocation Regulations, the Police Department's Application for Exception was dismissed.

Sunland Oil, BEE-1537; Cochran Oil Co., 3/4/81, BEE-1544

Sunland Oil and Cochran Oil Co. filed Applications for Exception from the reporting requirements of Form EIA-9A, No. 2 Distillate Price Monitoring Report. In their Applications, Sunland and Cochran alleged that the reporting obligations imposed a serious hardship and requested that they be relieved of the requirement to submit Form EIA-9A. In considering the exception applications, the DOE found that neither Sunland or Cochran had demonstrated that the reporting requirements imposed a serious hardship or grossly inequitable burden on them or that their costs for completion of the form outweighed the benefits to the nation of access to their data. Accordingly, the applications were denied.

Motions for Evidentiary Hearing

Jack Halbert, 3/6/81, DRH-0160, DRD-0160

Jack Halbert filed Motions for Discovery and Evidentiary Hearing in connection with his Statement of Objections to a Proposed Remedial Order that the DOE Southwest District of Enforcement issued to him on December 18, 1978. The DOE denied as irrelevant Halbert's discovery request for materials which would tend to prove that operating the properties in question would not have been profitable if allegedly lawful prices had been charged. The DOE also pointed out that the Office of Enforcement had agreed to make the remaining materials available to Halbert for inspection and photocopying. The DOE therefore concluded that no discovery was warranted. Halbert also requested that he be permitted to file a complete Motion for Evidentiary Hearing upon receipt of documents obtained through discovery. Since no discovery was ordered in this proceeding, the DOE concluded that there was no need for an evidentiary hearing to be convened in connection with this matter. The DOE also determined that both Halbert and the Office of Enforcement should be permitted to file briefs supporting their respective positions concerning the issue of whether the condensate produced from two gas units owned by Halbert was associated or non-associated production.

T.N.T. INC., 3/6/81, BRH-1324

T.N.T. Inc. filed a Motion for Evidentiary Hearing in connection with a Statement of Objections which T.N.T. filed in opposition to a Proposed Remedial Order which was issued to the firm on September 23, 1980. In considering the Motion, the DOE determined that T.N.T. had failed to establish that there were disputed issues of fact that could best be resolved at an evidentiary hearing. Accordingly, the Motion for Evidentiary Hearing was denied.

Whirlpool Corp., 3/4/81, BEH-0019

The Whirlpool Corporation (Whirlpool) filed a Motion for Evidentiary Proceeding in connection with its Statement of Objections to a Proposed Decision and Order which was issued to the Hobart Corporation on February 26, 1980. In its Motion, Whirlpool requested that the DOE establish a mechanism for resolving an allegedly disputed factual issue related to the Hobart exception proceeding. In its determination, the DOE found that the Motion was not sufficiently specific to satisfy the requirements of 10 CFR 205.64, and that the submission could not be evaluated on the basis of the limited information provided by Whirlpool. Accordingly, Whirlpool's Motion for Evidentiary Proceeding was denied.

Motion for Discovery

Quaker State Oil Refining Corp., 3/6/81, BED-0795

Quaker State Oil Refining Corporation filed a Motion for Discovery in which it requested that the Office of Hearings and Appeals respond to interrogatories regarding a Proposed Decision and Order issued to the firm on November 25, 1980. In considering the Motion, the DOE determined that the firm failed to show that the information it requested is relevant or material or that the approval of the Motion would advance the resolution of any disputed factual issue in the case. Quaker's Motion for Discovery was therefore denied.

Supplemental Orders

Atlantic Richfield Company, Mobil Oil Corporation, Chevron U.S.A., Inc., Texaco, Inc., Marathon Oil Company, 3/6/81, BEX-0172

In a Decision and Order issued to the Petitioners on February 27, 1981, the DOE granted in part the Petitioners' request for discovery in connection with the objection phase of an exception proceeding in which Ashland Oil, Inc. was granted an allocation of crude oil to replace the supplies lost when former President Carter banned the importation of crude oil from Iran. This supplemental order rules on five interrogatories that were not discussed in the February 27 Order and corrects a typographical error that appeared in the Order.

Office of Special Counsel for Compliance, 3/2/81, BRX-0170

Pursuant to the Orders of the Office of Hearings and Appeals in *Texaco, Inc.*, 7 DOE ¶ 82,014 (1981), and *Office of Special Counsel*, 7 DOE ¶ —— (February 24, 1981), the Office of Special Counsel submitted for the OHA's *in camera* inspection a document withheld from discovery by Texaco, Inc. and the Louisiana Land and Exploration Company. The OHA found that the document was identical in material respects to another document which it ordered OSC to disclose in the prior *Office of Special Counsel* Order. Accordingly, the OSC was directed to disclose that document to the firms in accordance with the disclosure terms attaching to the prior document.

Sabre Refining, Inc., 3/2/81, BEX-0162

The Department of Energy issued a Supplemental Order to Sabre Refining, Inc. in order to implement an adjustment to a Decision and Order which was issued to the firm on September 26, 1980 (Case No. DEX-0044). The September 26, determination required Sabre to purchase entitlements over a twelve-month period which are equivalent in value to the excess entitlement exception relief that the firm received during a prior period. However, in view of the impending termination of the Entitlements Program, the Supplemental Order requires Sabre to complete its outstanding repayment obligation during March 1981. Accordingly, the Entitlement Notice issued during March 1981 will direct the firm to fulfill the total amount of its remaining repayment obligation.

The 341 Tract Unit of the Citronelle Field, 3/6/81, DEX-0173

In a Supplemental Order, the DOE determined that the Citronelle Unit should be permitted access to a portion of the funds in an escrow account that was set up in order that the Unit could implement an miscible fluid displacement project on the Citronelle Field. In a previous Order, the DOE determined that as a condition precedent to receiving access to the funds in the escrow account, the Citronelle Unit had to return the benefits that it had previously received through the tertiary incentive program. In order to return those regulatory benefits to the participants in the entitlements program, the DOE concluded that the Citronelle Unit should be placed on the March 1981 Entitlements List as a buyer of entitlements in the amount of $611,330.93.

Interim Orders

The following firms were granted Interim Exception relief which implements the relief which the DOE proposed to grant in an order issued on the same date as the Interim Order:

Company Name, Case No., and Location

The Somerset Refinery, Inc., BEN-1500, Wash., D.C.

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Name and Case No.

Alliance Oil & Refining Co., BRO-1333, BRD-1333
Allied Materials Corp., DEA-0563
Apollo Oil Company, DEE-7911, DST-7911

Atlanta International Airport, BEE–1189
Brenton Bank and Trust Company, DEE–7647
Busler Enterprises, Inc., DEE–5175
Champlin Petroleum Co., BEA–0240
La Gloria Oil and Gas Company, BEA–0207
County of Henrico, BEO–0199
Crazy Bait Center, BEO–0769
Crystal Oil Co., BEG–0042
E–Z Serve, Inc., BEE–1541, BES–0112
First Church of Nazarene, BEO–0056
J&J Enterprises, BEE–1134
Jack Garrison Mobil, BEO–0396
Jacobs Standard Service, BEO–0061
James M. Kite, BEO–1070
Kaiser Aluminum and Chemical Corp., BEE–0398
Kansas-Nebraska Natural Gas Company, DEE–6970
Mapco, Inc., BEE–1568, BES–1568
Maruya's 76 Bay Service, DEE–8030
Midland Energy Corp., BXE–0756
Oakwood Midstate Auto/Truck Plaza Inc., BEO–0531
Pilot Petroleum Associates, Inc., DEE–2243
Poughquag Service Center, BEO–1042
Sun Oil of PA, BED–0540, BEJ–0074
The Market Basket, BEE–7360
Union Oil Co., BEA–0254
YWCA–YWCA of Lacrosse, WI, BEO–0457
Zake Hardi Exxon Service, BEO–0624

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 8, 1981.

[FR Doc. 81–11410 Filed 4–14–81; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Liberty-Coolidge Electrical Transmission Line, Maricopa and Pinal Counties, Arizona

AGENCY: Western Area Power Administration, U.S. Department of Energy.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Opportunity for Comment.

Notice is hereby given that in accordance with the National Environmental Policy Act (NEPA) of 1969, the Western Area Power Administration (Western) has commenced preparation of an environmental impact statement (EIS) to assess the environmental implications of a proposed action to reconstruct the Liberty-Coolidge 115-kV and 161-kV electrical transmission lines. The proposed action would be located in Arizona in the counties of Maricopa and Pinal and in the Gila River Indian Reservation.

The 115-kV portion of the line which runs between Phoenix Substation and Collidge Substation is 38 years old, and inspections indicate that the wood poles are deteriorated and need to be replaced. Systems studies indicate a need for increased transfer capacity and transmission capability for southern Arizona which can be accomplished by upgrading the entire line from Liberty Substation to Coolidge Substation to 230-kV capacity.

A number of environmental issues have been identified. These include the possibilities of locating structures within floodplains or wetlands, impacting Federal or State listed or proposed threatened or endangered species or critical habitats, esthetic impacts, crossing irrigated or irrigable agricultural land, crossing the Gila River Indian Reservation, crossing through the proposed Hohokam Pima National Monument and causing an adverse effect on other historic or cultural properties that are included in or are eligible for inclusion in the National Register of Historic Places.

Alternatives currently planned to be assessed in the EIS include the no action alternative, rebuilding in the existing right-of-way, developing some new right-of-way and using part of the existing right-of-way and developing all new right-of-way.

It is planned that three scoping meetings will be held. One meeting will be in Phoenix, one in Sacaton, and one in Collidge. A separate public notice of the meetings will be issued to Federal, State, and local agency officials and the generalized public when the exact locations and dates have been finalized.

The draft EIS is tentatively scheduled to be released to the public for review and comment during March 1982. The final EIS is tentatively scheduled for release during June 1982.

All interested agencies, organizations, and persons are invited to submit questions, comments and suggestions.

DATES: Any comments are due April 30, 1981.

ADDRESS: Send comments or suggestions to: Mr. R. A. Olson, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 87005.

FOR FURTHER INFORMATION CONTACT: Mr. Gary W. Frey, Environmental Manager, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, Telephone: (303) 231–1527.

Issued at Golden, Colorado, April 6, 1981.

William H. Clagett,

Deputy Administrator.

[FR Doc. 81–11412 Filed 4–14–81; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[EN–FRL 1764–6a]

Petition for Reconsideration of Waiver of Federal Preemption for California To Enforce Its NO_x Emission Standards and Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial.

SUMMARY: On July 30, 1980, Volvo of America Corporation (Volvo) petitioned for reconsideration of the Administrator's decision of June 14, 1978, allowing California to enforce its own NO_x emission standards and test for 1981 and later model year passenger cars [43 FR 25729]. The petitioner alleged that the Court's decision in *American Motors Corporation* v. *Blum* requires EPA to reconsider this California waiver decision in light of other waivers granted nationally pursuant to the Clean Air Act. In a letter and supporting memorandum sent to William Shapiro, Manager of Volvo's Regulatory Affairs Section, EPA denied the request for reconsideration. The text of that response is published below.

FOR FURTHER INFORMATION CONTACT: Deborah Schloss, Attorney/Advisor, Manufacturers Operations Division, Waivers Section, (EN–340), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 472–9421.

SUPPLEMENTARY INFORMATION:

Note.—My decision to deny Volvo's request for reconsideration will affect not only persons in California but also manufacturers located outside the State who must comply with California's standards in order to produce passenger vehicles for sale in California. For this reason I hereby determine and find that this decision is of nationwide scope and effect. Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the District of Columbia circuit no later than sixty days from the date notice of this action appears in the **Federal Register**. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings

brought by EPA to enforce these requirements.

Section 3(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981) requires EPA to determine whether a "rule" it intends to issue is a major rule and to prepare Regulatory Impact Analyses (RIA) for all major rules. Section 1(b) of the Order defines "major rule" as any "regulation" (as defined in the Executive Order) that is likely to result in:

(1) An annual effect on the economy of $100 million or more.

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

EPA has determined that this action is not a "major rule" requiring preparation of an RIA. It will not have an annual effect on the economy of $100 million or more; it will not cause a major increase in prices; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign companies.

Since this action does not change the California emission standards that are already in effect, it does not have any economic impact at all. Further, EPA is now considering a waiver of Federal preemption for changes that California has already made in its NO_x emission standards that will accommodate diesel manufacturers, including Volvo.

Under the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory analysis. EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. Volvo is not a "small entity" under the Act, nor are other automobile manufacturers that might be affected by this action.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at U.S. EPA, Manufacturers Operations Division, Marfair Building, second floor, 499 South Capitol St., Washington, D.C. 20460.

Dated: April 8, 1981.

Walter C. Barber, Jr.,

Acting Administrator.

April 8, 1981.

Mr. William Shapiro,

Manager, Regulatory Affairs, Volvo of America Corporation, Rockleigh, New Jersey 07647

Dear Mr. Shapiro: I would like to respond to Volvo of America Corporation's ("Volvo") July 30, 1980 request for reconsideration of the waiver of Federal preemption for California's 1981 and subsequent model year passenger car No_x emission standards. (43 FR 25729, June 14, 1978). Volvo suggested that the Circuit Court's decision in *American Motors Corporation* v. *Blum*, 603 F. 2d 978 (D.C. Cir. 1979), requires me to reconsider the June 14, 1978 California waiver decision in order to take into account a diesel NO_x waiver granted Volvo (45 FR 5480, Jan. 23, 1980), as well as other waivers granted pursuant to the Clean Air Act (Act).

I am denying Volvo's request that I reconsider the California waiver for the following reasons that I explain more fully in the accompanying memorandum: (1) a grant of relief to a manufacturer under the Clean Air Act's waiver provisions does not automatically require the EPA to reopen its California waiver decision, as Volvo suggests in light of *American Motors Corporation* v. *Blum*, (2) there is no agency determination in any section 202(b) waiver decision inconsistent with determinations made in my California waiver decision, and (30 Volvo has not submitted new evidence to show that California's 1981 and later model year NO_x standards are technologically infeasible.

Without a clear presentation of new evidence supporting the contention that the California standards are not technologically feasible within available lead time considering cost, and thus inconsistent with section 202(a) of the Act, it would be inappropriate for me to reconsider my June 14, 1978 waiver decision. Volvo should initially seek relief through State channels. Accordingly, I am denying Volvo's petition.

Sincerely yours,

Walter C. Barber, Jr.,

Acting Administrator.

Memorandum in Support of EPA Denial of Volvo Petition for Reconsideration of Waiver of Federal Preemption for California's 1981 and Subsequent Model Year NO_x, Emission Standards For Passenger Cars

On July 30, 1980, Volvo of America Corporation (Volvo) submitted a petition for reconsideration of EPA's decision to grant a waiver of Federal preemption to permit California to enforce its own passenger car oxides of nitrogen (NO_x) emission standards for 1981 and later model years.[1] In its petition Volvo asserts that *American Motors Corporation* v. *Blum*[2] requires EPA to reconsider its June 14, 1978 waiver of Federal preemption relating to those California standards. In a waiver decsion of January 23, 1980, Volvo was granted relief from the 1981 and 1982 Federal NO_x standard pursuant to Section 202(b)(6)(B) of the Clean Air Act (Act).[3] Volvo contends that the "small-volume manufacturer" provision of the Act,[4] which is construed in *AMC* v. *Blum*, is a waiver provision comparable to Sections 202(b)(5)(A), 202(b)(6)(A) and 202(b)(6)(B) of the Act,[5] and that *AMC* v. *Blum* therefore requires the Administrator to take all such Federal waiver decisions into account when considering California's request for waivers of Federal preemption for its emission standards.[6]

Volvo has misconstrued the holding and effect of *AMC* v. *Blum*. As a matter of law, that case does not require reconsideration of California waivers whenever a Federal waiver under section 202(b) of the Act pertaining to a corresponding Federal requirement is granted. Further, Volvo has not presented sufficient evidence to lead the Administrator to reconsider his waiver of Federal preemption for California passenger car NO_x standards. Neither the January 23, 1980 diesel NOx waiver decision, nor other decisions under paragraphs 202(b) (5) and (6) of the Act to grant waivers of Federal emissions standards, establish that the 1981 and later model year California NO_x standards are not technologically feasible. In fact, the Administrator's findings in those Federal waiver decisions do not address the question of whether the 1981 and later model year California NO_x standards are technically feasible. Finally, Volvo has not submitted any new data which would require reconsideration of the Administrator's decision.

A. *AMC v. Blum does not require reconsideration of an EPA decision to grant California a waiver of Federal preemption simply because relief from Federal standards has been granted to certain vehicle models under other waiver provisions of the Clean Air Act.*

In its petition, Volvo attempts to expand the applicability of *AMC* v. *Blum* by analogy, characterizing the 202(b)(1)(B) small-volume manufacturer provision of the Act as a waiver provision that is similar to Sections 202(b)(5)(A), 202(b)(6)(A) and 202(b)(6)(B). *AMC* v. *Blum* dealt with a specific provision of the Act that grants additional lead time to meet a 1.0 gpm NO_x standard for light-duty vehicles to small-volume manufacturers that must purchase their emission control technology from other manufacturers.[7] The

[1] 43 FR. 25729, June 14, 1978.

[2] 603 F.2d 978 (D.C. Cir. 1979.

[3] Clean Air Act, § 101 *et seq.*, 42 U.S.C. § 7401 *et seq.*, as amended.

[4] Section 202(b)(1)(B), 42 U.S.C. § 7521(b)(1)(B).

[5] 42 U.S.C. §§ 7521(b)(5)(A), 7521(B)(6)(A) and 7521(b)(6)(B). These sections are, respectively, the carbon monoxide (CO), innovative technology NO_x, and diesel NO_x waiver provisions.

[6] Volvo Petition for Reconsideration of June 14, 1978 California Waiver, at 2, dated July 30, 1980 (hereinafter "Volvo Petition").

[7] Section 202(b)(1)(B) of the Act states in relevant part: "The Administrator shall prescribe standards in lieu of those required by the preceding sentence which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year

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small -volume manufacturer waiver provision is unique in that it embodies a Congressional finding that eligible manufacturers, principally AMC, should receive additional lead time to meet the 1.0 gpm No_x standard.[8]

The specific Congressional finding that under prescribed circumstances additional lead time is necessary is unique to the small-volume manufacturer provision, and is not present in the other sections of the Act. Moreover, the fact that Congress determined that qualified manfacturers such as AMC are entitled to additional lead time was the critical factor leading to the Court's decision.[9] *AMC* v. *Blum* did not involve or discuss other Federal waiver provisions, which, unlike section 202(b)(1)(B), do not reflect such a Congressional finding.

In order to appreciate the significance of this Congressional finding as the crux of the Court's reasoning in extending the applicability of the small-volume manufacturer provision of the Act to NOx standards covering passenger cars sold in California, a brief review of section 209(b) is helpful.[10] Section 209(b) *requires* the Administrator to grant the State of California a waiver of Federal preemption for its emission standards, after an opportunity for a public hearing, if the *State* determines that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. The only circumstances under which the Administrator cannot grant a waiver are where (1) California's determination that its standard would be at least as protective as Federal standards was arbitrary and capricious, (2) the State does not need such standards to meet compelling and extraordinary conditions, or (3) such State standards and accompanying enforcement procedures are not consistent with Section 202(a) of the Act. State standards and enforcement procedures are deemed not to be consistent with Section 202(a) if there is inadequate lead time to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within that time frame, or if the Federal and California certification procedures are inconsistent.[11]

The significance of the small-volume manufacturer provision, as viewed by the court in *AMC* v. *Blum*, becomes apparent when determining the technological feasibility of California's NO_x standards for qualifying small-volume manufacturers. The small-volume manufacturer waiver provision was interpreted by the court as a "proviso" to section 202(a) of the Act,[12] such that the determination of technological feasibility of the 1.0 gpm NO_x standard in question within available lead time is taken out of the hands of the Administrator [13] and is made by the unique Congressional finding of 202(b)(1)(B). The Court interpreted 202(b)(1)(B) as establishing, as a matter of law, that California's NO_x standards, like the Federal NO_x standards, must make provision for the extra lead time Congress itself found necessary for qualified small-volume manufacturers.[14] The Court held that the California waiver permitted enforcement of regulations which denied AMC the statutorily-mandated lead time and thus were inconsistent with Section 202(a) of the Act.[15]

The other waiver provisions of the Act, including the diesel NO_x waiver provision, are quite different from section 202(b)(1)(B). These other waiver provisions require a finding by the Administrator as to whether specific engine families are able to meet the emission standards. The Administrator must also make findings with regard to matters such as public health and welfare, good faith efforts by the manufacturers to comply, long-term air quality benefits, and fuel economy. In contrast, the small-volume manufacturer waiver provision requires only that the Administrator determine whether a manufacturer that applies for a waiver under 202(b)(1)(B) meets all the criteria that qualify it for additional lead time.

The Court in *AMC* v. *Blum* concluded that Congress had found that qualified small-volume manufacturers need additional time to meet the 1.0 gpm NO_x standard, Federally and in California. To provide the Administrator with an adequate basis for denying California a waiver for its NO_x standards without the benefit of 202(b)(1)(B)'s unique legislative finding of fact, Volvo has the burden under 209(b) of proving that meeting State emission limitations is not technologically feasible within the prescribed time.[16]

B. *Neither the first EPA diesel NO_x waiver decision, nor any other decision the Agency has made to grant waivers under sections 202(b)(5) and (6) of the Act establishes that California standards are inconsistent with section 302(a) of the Act so that reconsideration of the waiver of Federal preemption for those standards is warranted.*

Volvo asserts that *AMC* v. *Blum* "establishes a precedent that California motor vehicle standards must be consistent with Federal standards including the Federal standards established by appropriate waiver provisions of the Act".[17] It is not entirely clear what Volvo intended by this statement. Certainly the California standards need not be identical to their Federal counterparts, even those established in waiver decisions. An argument along those lines would be inconsistent with section 209(b) of the Act. Because California has special air pollution problems, section 209(b) permits the Administrator to waive Federal preemption to permit the State of California to implement its own air pollution control programs that are, in the aggregate, at least as protective as nationally applicable standards. The import of section 209(b) is not that California and Federal standards be identical, but that the Administrator not grant a waiver of Federal preemption where compliance with the California standards is not technologically

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1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that:

(i) the ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by other manufacturers and purchased from such manufacturers; and

(ii) such manufacturer lacks the financial resources and technological ability to develop such technology."

[8] 123 Cong. Rec. S9232 (daily ed. June 9, 1977).

[9] AMC qualified for relief under section 202(b)(1)(B) because it demonstrated that pursuant to the requirements of that section, it produced under 300,000 light-duty vehicles worldwide, was vendor-dependent for emission control equipment, was financially unable to develop the necessary technology to meet 1.0 gpm NOx, and was unable to apply purchased technology in time to meet the 1981 and 1982 Federal emission standards. 44 FR 47880 (August 15, 1979).

[10] Section 209(b)(1) States:

The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that:

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this part.

[11] This approach to section 209(b) of the Act has been used consistently by EPA in California waiver decisions and was upheld by the Court in *MEMA* v. *EPA*, 13 ERC 1737, (D.C. Cir., August 3, 1979), *cert. denied*, 48 U.S.L.W. 3750 (May 19, 1980). See, for example, 44 FR 38660, 38661 (July 2, 1979).

[12] 603 F. 2d 978, 981.

[13] Clean Air Act § 202(a)(2), 42 U.S.C. 7521(a), states that the standards "shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period."

[14] The Court in *AMC* v. *Blum* quotes the legislative history of Section 202(b)(1)(B) at length and states at 604 F. 2d 981 that "the Administrator is not directed to allow such lead time as he finds necessary . . . Congress itself finds and mandates that with respect to small manufacturers a lead period of two years is necessary . . ." It should be noted that the Congressional finding that small manufacturers need additional lead time refers to *qualified* small manufacturers. Small size alone is not enough to make a manufacturer eligible for relief. The requirements of 202(b)(1)(B) reflect Congress' desire to assist manufacturers that, because of their small size, are unable to achieve the statutory NO_x standard within the same time frame established for other manufacturers. *See* 123 Cong. Rec. S9231 (daily ed. June 9, 1977).

[15] 603 F. 2d 978, 981. To implement the Court's decision, EPA published a notice in the **Federal Register** vacating the passenger car waiver decision to the extent that the decision permits California to enforce against AMC 1980 and 1981 passenger car NO_x Standards other than the California 1979 model year NO_x standard of 1.5 gpm. 45 FR 45359 (July 3, 1980). In a second notice published at 45 FR 77509 (November 24, 1980) EPA granted California a waiver of Federal preemption for new exhaust emission standards and test procedures reflecting the adoption of special NO_x emission standards for vehicles produced by qualified small-volume manufacturers.

[16] A discussion of a "waiver opponent's" burden of proof in California waiver proceedings is set out in several of the Administrator's decisions to waive Federal preemption for California to enforce standards and/or enforcement procedures. *See* e.g., 42 Fed. Reg. 25755, 25756 (May 19, 1977); 43 Fed. Reg. 25729, 25734 (June 14, 1978). *See also MEMA* v. *EPA*, 13 ERC 1737, (D.C. Cir., August 3, 1979), *cert. denied*, 48 U.S.L.W. 3750 (May 19, 1980).

[17] Volvo Petition at 2.

feasible within available lead time, consistent with section 202(a).[18]

Another possible interpretation of Volvo's position is that EPA's decision to grant diesel NO_x waivers is sufficient proof that the California standards cannot be met within the allotted time, so as to warrant reconsideration of the June 14, 1978 decision. This argument is unconvincing. The diesel NO_x waivers which EPA granted did not consider the technological feasibility of 1981 and subsequent model year California standards. Thus, it would be erroneous to imply from these waiver decisions a finding of infeasibility of State standards.

The Administration granted Federal NO_x waivers for a number of engine families which applicants showed to be incapable of meeting the statutory standards for model year 1981 without a waiver.[19] This does not translate into a finding of technological infeasibility of the 1981 model year California NO_x standards. The California standards are different from the Federal standards in that California's regulatory scheme presents the manufacturers with a number of alternatives to which they may certify.[20] The manufacturers may select either the primary or secondary set of standards, and may choose either the 50,000 or 100,000 mile option. EPA made no finding in the NO_x waiver decision concerning the feasibility of each of these alternative California standards. Further, the 100,000 mile standard of 1.5 gpm NO_x is numerically less stringent than the Federal 1.0 gpm NO_x standard and was met in model year 1980 by a number of diesel manufacturers.[21]

The Administrator based his decision to grant NO_x waivers for model year 1982 on a finding that:

"The risks in applying new control technology are sufficient for me to determine that waivers are necessary * * * because the applicants at this time have little, if any, experience in production of vehicles incorporating the more advanced control technologies * * *" [22]

No evidence was introduced which was sufficient to show that 1.0 gpm NO_x could not be met in California or nationally in 1982.[23] Thus, a finding of unreasonable risk in applying technology nationally was made rather than a finding of technology infeasibility. The risks and costs inherent in attempting to certify an engine family for sale in the forty-nine States, which were taken into account for the Federal diesel NO_x waivers, cannot be equated with the risks and costs of attempting to produce complying vehicles for the limited California market.

This very distinction was made by at least one manufacturer in its NO_x waiver application, in which it indicated that it planned to introduce in the California market light-duty diesels meeting the 1982 California NO_x standard and the 0.6 gpm Federal particulate standard.[24] The manufacturer asserted, and EPA agreed, that it would be desirable to grant a NO_x waiver in order to permit manufacturers to phase in their advanced diesel NO_x control equipment in California.[25] By agreeing with the suggestion that granting a waiver for 1982 would facilitate a phase-in of advanced emission control technology in California, EPA implicitly indicated that it had no reason to believe that such state standards were infeasible. This negates any implication that the grant of a Federal waiver for the 1982 model year is tantamount to an Agency finding that manufacturers cannot meet 1982 California standards.[26] Thus, the EPA decision to grant certain NO_x waivers fails to establish manufacturers' inability to comply with California regulations.

Volvo suggested in its petition that *AMC* v. *Blum* requires *all* Federal waivers to be taken into account by the Administrator in determining whether or not California should be granted a waiver from Federal preemption. This memorandum has already discussed this proposition as it applies to EPA's diesel NO_x waiver decisions. No other waiver provisions of the Act appear to lend support to Volvo's petition. Neither Volvo nor any other manufacturer has presented evidence suggesting that determinations made in CO waiver proceedings would bear on the California NO_x waiver decision.[27] Thus, as manufacturer waiver provision of the Act, as interpreted by the Court, is unique in its effect on EPA consideration of California waivers.

C. *Volvo has not submitted any new data to show that the California NO_x standards are not technolgically feasible.*

The opponents of a California waiver bear the burden of proving that the conditions exist that would justify denial of the waiver.[28] Volvo and other automobile manufacturers has the opportunity, both at hearings of the California Air Resources Board (CARB) to consider the proposed standards and at the EPA hearing to consider California's request for a waiver of Federal preemption for those standards, to present their objections and their evidence regarding the technological feasibility of the standards. The Administrator concluded, based on the record before him, that he could not make the findings necessary to deny California a waiver of Federal preemption, including a finding that manufacturers had demonstrated the proposed standards were technologically infeasible (and thus inconsistent with section 202(a)). The Administrator therefore waived application of section 209(a) of the Act to the California regulations in question.

In order to obtain reconsideration of the June 14, 1978 waiver of Federal preemption for California to enforce its own standards, the manufacturers must now show that there is new information which would warrant denial of a waiver if the information had been available at the time of the original decision.

Volvo has not come forward with any new specific evidence in its petition indicating that California's protectiveness determination was arbitrary and capricious, that State standards are not needed to meet compelling and extraordinary conditions, or that the 1981 and later model year NO_x standards are not consistent with section 202(a) of the Act in that they are not attainable within available lead time, considering costs. Further, as discussed above, neither the Federal diesel NO_x waiver decisions themselves, nor any other waivers granted under section 202(b) of the Act constitute "new data" bearing on the technological feasibility of California standards. Finally, Volvo did not introduce any new evidence during the Federal NO_x waiver proceedings, nor did it point out any evidence introduced by other parties that would justify reconsideration of the California waiver.[29] Thus, EPA has no new

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[18] H.R. Rep. No. 95-294, 95th Cong., 1st Sess. 301 (1977).

[19] 45 Fed. Reg. 5485 (January 23, 1980), 45 FR 34718 at 34720-22 (May 22, 1980), 45 FR 1599 (January 6, 1981), 45 Fed. Reg. 1603 (January 6, 1981). The Administrator denied all applicant's requests for waivers covering the 1983 and 1984 model years because they submitted insufficient data to show they needed the waiver in those model years. Thus, EPA has made no determinations in its diesel NO_x waiver decisions regarding manufacturers' technological capabilities in 1983 and later model years that would give the Administrator cause to reconsider the conclusions in the June 14, 1978 waiver decision regarding the technological feasibility of California's NO_x standards in those model years. The Administrator also denied some requests for waivers in model years 1981 and 1982 for certain engine families on the grounds of insufficient data from which he could conclude that the engine families in question were incapable of meeting the Federal 1981 and 1982 NO_x standard.

[20] See charts at 45 Fed. Reg. 12291, 12293 and 12294 (February 25, 1980).

[21] See, e.g., California Air Resources Board Executive Orders A-3-34, A-3-35, A-3-36 (November 2, 1979); Executive Order A-6-184-1 (March 12, 1980); Executive Order A-24-10 (February 19, 1980); and Executive Order A-7-36 (September 20, 1979).

[22] 45 Fed. Reg. 5485 (January 23, 1980d); 45 Fed. Reg. 34718 (May 22, 1980).

[23] 45 Fed. Reg. 5480, 5485, n. 81.

[24] NO_x Waiver Application submitted by Daimler-Benz, A.G., June 1979, I-3-4. *See also* Automobiles Peugeot Application for Waiver of 1981-1984 NO_x Emission Standard, dated February 6, 1980, 1-2.

[25] 45 Fed. Reg. 5485 (January 23, 1980); 45 Fed. Reg. 34718 (May 22, 1980).

[26] The Administrator noted that using California emission standards is a familiar technology forcing tool. *Id.* For example, in a decision issued in April of 1973 granting a one-year suspension of automobile emission standards to five manufacturers, the Administrator in effect utilized California regulations to force the use of catalytic converters on a portion of 1975 vehicles. This was meant to mitigate the risks faced in nationwide production of vehicles employing the new technology, while requiring manufacturers to prepare for the widespread use of catalysts in model year 1976. 38 Fed. Reg. 10317, 10319 (April 26, 1973).

[27] EPA has never received an application for a waiver under section 202(b)(8)(B) of the Act.

[28] *MEMA* v. *EPA*, 13 ERC 1737 (D.C. Cir. August 3, 1979), *cert. denied*, 48 U.S.L.W. 3750 (May 19, 1980). See also 42 Fed. Reg. 25755, 25756 (May 19, 1977) and 43 Fed. Reg. 25729, 25734 (June 14, 1978) for discussion of waiver opponents' burden of proof in California waiver proceedings.

[29] The evidence Volvo and other manufacturers introduced in Federal waiver proceedings pertained to the feasibility of the Federal NO_x standard with regard to the individual engine families for which the manufacturers requested a waiver. Even if a manufacturer could establish that some diesel engine families cannot meet the "waived" California NO_x standards, the Administrator is not necessarily required to vacate his earlier decision to grant California a waiver to enforce those

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facts before it that would justify a reconsideration of the June 18, 1978 California waiver decision.

Conclusion

The Administrator's role with regard to California emission regulations is highly circumscribed. Under the Act, he is required to grant a wavier of Federal preemption unless certain conditions exist.

In order to obtain reconsideration of a California waiver decision, the opponent of the waiver must show that circumstances now exist that would have required denial of the waiver of Federal preemption had they occurred or been recognized at the time of the original decision.

Since the court's decision in *AMC* v. *Blum* requiring reconsideration of California waivers in light of subsequent Federal waivers applies only to the small-volume manufacturer provision of the Act because of the unique Congressional determination on technological feasibility relating to that provision, it does not require the Administrator to review his California waiver decisions automatically in light of other waivers granted pursuant to section 202(b) of the Act.

Thus, the waiver decisions which the Administrator granted under section 202(b) do not, by themselves or in light of *AMC* v. *Blum*, justify the reconsideration Volvo seeks. Further, Volvo has not come forward with any new information, nor has it pointed out any findings in any Federal waiver decision or evidence in the record of any Federal waiver proceeding that would trigger reconsideration. Therefore, denying the petition is appropriate.

Dated: April 8, 1981.

Walter Barber,

Acting Administrator.

[FR Doc. 81-11334 Filed 4-14-81; 8:45 am]

BILLING CODE 6560-33-M

[OPTS-51242; TSH-FRL 1799-8]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 81-10404 appearing at page 20763 in the issue of Tuesday, April 7, 1981, the Docket No. in the heading should have appeared as set forth above.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 81-223]

Andrew J. Woods; Designating Application for Hearing on Stated Issues

In the matter of application of Andrew J. Woods, 3932 Wyandotte Trail, Indianapolis, Indiana 46240; for renewal of Citizens Band Radio Station license KTV-7851.

Designation Order

Adopted: April 2, 1981.

Released: April 8, 1981.

The Chief, Private Radio Bureau, has under consideration the application of Andrew J. Woods, dated September 9, 1980, for renewal of Citizens Band radio station license KTV-7851.[1]

1. Information before the Commission indicates that on March 22, 1980 station KTV-7851 made radio transmissions which were in violation of the following CB Rules: 20(a) (overpower), 21(a) (use of a linear amplifier), 22(b) (station used to transmit unauthorized constant carrier), 23(a)(6) (station used to transmit whistling) and 30(a) (station identification requirements).[2, 3]

2. Section 309(e) of the Communications Act of 1934, as amended, requires that the Commission designate an application for hearing where it cannot find that grant of the application would serve the public interest, convenience and necessity. The radio operation described above precludes the Commission from making that determination without a hearing.

3. Accordingly, it is ordered, pursuant to Section 309(e) of the Act and §§ 1.973(b) and 0.331 of the Commission's Rules, that Woods' application is designated for hearing upon the following issues:

(a) To determine whether there were transmissions on March 22, 1980, in wilful violation of CB Rules 20(a), 21(a), 22(b), 23(a)(6) and/or 30(a).

(b) To determine whether Woods has the requisite qualifications to remain a Commission licensee.

(c) To determine whether grant of the application would serve the public interest, convenience and necessity.

4. It is further ordered, That if Woods wants a hearing on this matter, he must file a written request for a hearing within 20 days.[4] If a hearing is requested, the time, place, and Presiding Judge will be specified by subsequent Order. If Woods waives his right to a hearing, his application will be dismissed with prejudice.

5. It is further ordered, That copies of this Order shall be sent by Certified Mail—Return Receipt Requested and by Regular Mail to Woods at his address of record (as shown in the caption).

Chief, Private Radio Bureau

W. Riley Hollingsworth, Jr.,

Acting Chief, Compliance Division.

[FR Doc. 81-11330 Filed 4-14-81; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 81-157, File Nos. BRH-85 and BRSCA-206; BC Docket No. 81-158, File No. BPH-10386]

Broadcast Communications, Inc., and Genesis Broadcasting Limited; Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Broadcast Communications, Inc., Evanston, Illinois, Has: 105.1 MHz, Channel No. 286, 6.2 KW (H&V), 1170 feet HAAT, for renewal of Main, Auxiliary, and Sub-Carrier Authorization Licenses of Station WOJO(FM), Evanston, Illinois, BC Docket No. 81-157, File Nos. BRH-85 and BRSCA-206; and Genesis Broadcasting Limited, Evanston, Illinois, Req: 105.1 MHz, Channel No. 286, 6.2 KW (H&V), 1170 feet HAAT, for Construction permit, BC Docket No. 81-158, File No. BPH-10386.

Memorandum Opinion and Order

Adopted: March 11, 1981.

Released: April 8, 1981.

By the Commission: Chairman Ferris not participating.

1. The Commission has before it for consideration the above-captioned applications of Broadcast Communications, Inc. (BCI) for renewal of its licenses for Station WOJO(FM), Evanston, Illinois; the above-captioned application of Genesis Broadcasting Limited (GBL) for a construction permit for the main BCI facilities; an informal objection to the renewal of BCI's license filed January 24, 1979, by Paul

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standards, if on the basis of the record he could not conclude that any limitation caused by the standards would cause basic market demand to go unsatified. In considering manufacturers' claims in the California waiver proceedings for 1979 and later model passenger car standards that the standards may result in a restricted vehicle offering incapable of meeting basic market demand in California, the Administrator was unable to conclude on the basis of the record for those proceedings that any limitation would in fact occur or that any such limitation would cause basic market demand not to be satisfied. *See* 43 Fed. Reg. 25729, 25734 (June 14, 1978). He also noted that the applicability of *International Harvester* v. *Ruckelshaus* to a California waiver situation was set forth in a previous waiver decision published on October 7, 1976 (41 Fed. Reg. 44209, 44212). *See* at 25734, n. 101.

[1] Pursuant to § 1.926(c) of the Rules, Woods has continuing operating authority pending a determination of whether his renewal application should be granted or denied.

[2] The CB Rules are in § 95.401 of the Commission's Rules.

[3] The March 22, 1980 operation was the subject of an Official Notice of Violation mailed to Woods on April 17, 1980.

[4] The attached form should be used to request or waive hearing. It should be mailed to the Federal Communications Commission, Washington, D.C. 20554, in the enclosed envelope.